***THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY**

WRIT PETITION No.853 of 2005

% 11.03.2005

Between:

Sangu Brahmam, S/o. Late Lakshminarayana & 7 others

... PETITIONERS

AND

The Station House officer, Garidepalli P.S.,

Nalgonda District & 4 others

...RESPONDENTS

! COUNSEL FOR THE PETITIOENRS: Mr.M.Rajamalla Reddy.

^ COUNSEL FOR THE RESPONDENT No.1: G.P. for Home.

< Gist:

> Head Note:

? CITATIONS:

1. AIR 1993 SUPREME COURT 1225

2. AIR 1982 ANDHRA PRADESH 394

3. AIR 1971 ANDHRA PRADESH 53

4. AIR 1962 SUPREME COURT 1044

5. 1982 (1) APLJ SHORT NOTES 42

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE ELEVENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 853 of 2005

Between:

1 Sangu Brahmam, S/o. Late Lakshminarayana,
R/o. Huzurnagar Village and Mandal, Nalgonda District.
2 Sangu Srinivasa Rao, S/o. Late Lakshminarayana,
R/o. Huzurnagar Village and Mandal, Nalgonda District.
3 Sangu Naga Malleswara Rao, S/o. Late Lakshminarayana,
R/o. Huzurnagar Village and Mandal, Nalgonda District.
4 Sangu Janakamma, W/o. Late Lakshminarayana,
R/o. Huzurnagar Village and Mandal, Nalgonda District.
5 Mamidi Govindamma, W/o. Jayaram,
R/o. Huzurnagar Village and Mandal, Nalgonda District.
6 Sangepu Jayalakshmi, W/o. Subba Rao,
R/o. Ketheveerampadu, Nandigam Mandal, Nalgonda District.
7 Vaddepalli Savitri, W/o. Prasad,
R/o. Nagulavancha, Chintakani Mandal, Nalgonda District.
8 Putta Eshwaramma, W/o. Nageswara Rao,
Jangoan, Warangal District.

... PETITIONERS

AND

1 The Station House officer, Garidepalli P.S.,

Nalgonda District.

2 Dasaraju Narayana, S/o. Munnaiah,
R/o. Kasavarigudem, Garidepalli Mandal,

Nalgonda District.

3 Dasaraju Mangaiah, S/o. Ramaiah,
R/o. Kasavarigudem, Garidepalli Mandal,

Nalgonda District.

4 Dasaraju Lakshmaiah, S/o. Ramaiah,
R/o. Kasavarigudem, Garidepalli Mandal,

Nalgonda District.

5 Dasaraju Pichaiah, S/o. Ramaiah,
R/o. Kasavarigudem, Garidepalli Mandal,

Nalgonda District.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction, particularly one in the nature of Mandamus, declaring the inaction of the 1st respondent herein in not giving necessary help/to the petitioner herein to protect their possession and enjoyment of their land in S.No. 354-1 admeasuring 14 cts., S.no. 354-2 admeasuring Ac. 5.32 cts. S.No. 354-3 admeasuring 12 cts., S.No. 355-1 admeasuring 41 cts. S.No. 355-2 admeasuring Ac. 6.32 cts. total admeasuring Ac. 12.32 cts. situate at Kasavarigudem Village H/o. Kalvapalli Village, Garidepalli Mandal, Nalgonda District as illegal, arbitrary, unreasonable, and violative of Articles 14, 21 and 300-A of the Constitution of India and issue a consequential direction to the respondent herein to extend all necessary help/to the petitioners herein to protect their possession and enjoyment of their above said lands and pass such other order or orders.

Counsel for the Petitioners: MR.M.RAJAMALLA REDDY

Counsel for the Respondent No.1: GP FOR HOME

Counsel for the Respondent Nos.2 to 4: Mrs.S.Nanda

The Court at the stage of admission made the following :

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.853 OF 2005

O R D E R:

This writ petition is filed for a declaration that the inaction of the first respondent in not according necessary help to the petitioners, to protect their possession over an extent of Ac.12-32 cents of land in various survey numbers of Kasavarigudem village, H/o.Kalvapalli village, Garidepalli Mandal of Nalgonda District, is illegal, arbitrary and violative of Articles 14, 21 and 300-A of the Constitution of India. A consequential direction is sought to the first respondent for extension of necessary help to the petitioners.

Briefly stated, the relevant facts are that the petitioners, or their predecessors in title as the case may be, were granted patta certificates, in respect of the land referred to above, by the Settlement Officer under the provisions of the Estates Abolition Act, 1948, through order dated 23.03.1967. When the respondents 2 to 5 tried to interfere with their possession, suits in O.S.Nos.45 and 46 of 1987 were filed in the Court of Senior Civil Judge, Suryapet, for the relief of perpetual injunction. Respondents 2 to 5 in turn filed O.S.No.44 of 1987, for similar relief, in respect of the same land. Through a common judgment dated 29.06.1988, the trial Court decreed the suits filed by the petitioners and dismissed the one filed by the respondents 2 to 5. A.S.Nos.21, 22 and 23 of 1988 were filed by the respondents 2 to 5 in the Court of District Judge, Nalgonda. The appeals were dismissed, through a common judgment dated 21.06.1991. Second Appeal Nos.426 of 1991, 30 of 1992 and 38 of 1992 were filed in this Court by the respondents 2 to 5. On 22.12.1999, this Court dismissed the Second Appeals, with certain directions. The possession of the petitioners over the land was affirmed, and it was directed that the same shall be subject to the out come of the proceedings that were pending before the Settlement Officer, after remand.

The order dated 23.07.1967 passed by the Settlement Officer was challenged by the respondents 2 to 5, before the Director of Settlements, and the appeal was allowed through order dated 16.06.1995. The petitioners filed a revision before the Commissioner of Survey, Settlements and Land Records. Through the order dated 18.06.1998, the Commissioner of Settlements had set aside the order of the Director of Settlements and remanded the matter to the Settlement Officer, for fresh disposal. Writ Petition No.33697 of 1998, filed by the petitioners, was dismissed and

confirmed in Writ Appeal No.1472 of 1999. The matter is now said to be pending with the Settlement Officer.

Petitioners contend that though the decree for perpetual injunction in their favour in O.S.Nos.45 and 46 of 1987 became final, the respondents 2 to 5 started interfering with their possession, and when they complained the same to the first respondent, no action has been taken thereof.

On behalf of respondents 2 to 4, a counter affidavit is filed. A detailed account of the proceedings that have ensued before the parties is furnished. It is also stated that respondents 2 to 4 have been cultivating the land, and when the petitioners interfered, proceedings were initiated against them under the relevant provisions of Indian Penal Code. They contend that the writ petition is not maintainable for enforcing the decree in a suit for perpetual injunction.

Sri M.Rajamalla Reddy, learned counsel for the petitioners, submits that the decrees granted by the trial Court in favour of the petitioners were affirmed by the appellate Court in the First Appeals and by this Court in the Second Appeals. He contends that once the decree for perpetual injunction has become final, respondents 2 to 5 cannot interfere with the possession, and that the first respondent is under obligation to ensure that the decrees passed by the Civil Courts are respected. He places reliance upon certain judgments rendered by this Court.

Smt.S.Nanda, learned counsel for the contesting respondents 2 to 4, on the other hand, submits that there is a serious dispute as to the entitlement of the petitioners over the land, and the orders of granting ryotwari patta in favour of the petitioners was set aside by the competent authority. She contends that even assuming that there exists a decree, the petitioners have to file an EP under Order 21 of CPC. A writ petition cannot be maintained for such a relief. She places reliance upon a judgment rendered by the Supreme Court in ***Mohan Pandey V. Usha Rani Rajgaria***. She attempts to distinguish the judgment of this Court, relied upon by the learned counsel for the petitioners. The learned Government Pleader for Home made submissions on the same lines.

There is a long standing dispute between the petitioners on the one hand, and respondents 2 to 5 on the other, in respect of the land referred to above. The proceedings initiated under the Estates Abolition Act, two decades ago, are still at the stage of consideration before the primary authority, on remand by the

Commissioner of Settlements. The said proceedings are not the subject matter in this writ petition.

It is a matter of record that the petitioners filed two suits and the respondents filed one suit before the Court of Senior Civil Judge, Suryapet, for the relief of perpetual injunction, in respect of the same land, and the trial Court granted relief in favour of the petitioners. The First Appeals and Second Appeals preferred by the contesting respondents were rejected, and the finding in favour of the petitioners as to possession over the property became final.

It is true that if there is any violation of the decree granted in a suit for perpetual injunction, the aggrieved party can file an E.P. under Order 21 Rule 37 C.P.C. However, it cannot be said that execution is the only remedy in such an event. Once a court of competent civil jurisdiction adjudicates upon the rights of the parties, the enforcing agencies of the State, be it from the Department of Revenue or Home, are under obligation to respect the same and ensure that the rights so declared are not flouted by others, particularly the parties to it. A Division Bench of this Court in ***Satyanarayana Tiwari V. S.H.O., P.S. Santhoshnagar***, dealt with an identical issue, but in relation to an order passed under Order 39 Rules 1 & 2 of C.P.C. As in this case, there too it was contended that violation of an order of temporary injunction can be dealt with, in accordance with sub-rule (3) of Rule 2 of Order 39 C.P.C. After referring to the judgment of this Court in ***R.Audemma V. P.Narasimham*** and the judgment of the Supreme Court in ***Calcutta Gas Company (Prop) Ltd. V. State of West Bengal***, the Division Bench held as under:-

> "The power which a civil court has under Section 151 C.P.C., the High Court has in much larger measure under Article 226 of the Constitution. We have, therefore, no hesitation in concluding that this court has ample jurisdiction, to issue a writ or direction to all the authorities including the police within the State to enforce the orders of the civil court as confirmed by the High Court in a civil revision petition and maintain the rule of law. The police authorities are therefore bound to give all assistance to the appellant to enforce and see that the orders of this court as confirmed in C.R.P.No.3258/81 are implemented and any enquiry or report of any other authority, revenue or police cannot be put as an excuse for not rendering the required help to the appellant to maintain his possession."

If this is the obligation of the police to ensure compliance with an order passed

under Order 39 Rule 1 C.P.C., the duty to see that the decrees granted by the courts at the disposal of the suits is much more. In ***R.Veeraiah V. Commissioner of Police***, this Court held that wherever a judgment debtor in a decree for perpetual injunction violates it, it shall be open to the decree holder to approach the High Court under Article 226 of the Constitution of India.

The judgment of the Supreme Court in ***Mohan Pandey V. Usha Rani Rajgaria*** (1 supra), relied upon by the learned counsel for the contesting respondents, is of no help to her. That was a case in which the writ petition was filed for the very relief of perpetual injunction. The Supreme Court held that such remedies have to be worked out in a civil court and a writ petition cannot be maintained. In the instant case, the petitioners got their rights adjudicated by filing regular suits. The controversy is only as to the steps to be taken to ensure compliance with the same.

For the foregoing reasons, the writ petition is allowed, and the first respondent is directed to extend necessary help to the petitioners to protect their possession over the land in survey numbers referred to above, unless they are dispossessed through any proceedings in accordance with law, by an appropriate court or statutory authority. There shall be no order as to costs.

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11th March, 2005

Note: L.R.copies to be marked.

(B/o)

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To

One fair copy to the Hon'ble Sri Justice L.Narasimha Reddy

(For his Lordship's kind perusal)

1 The Station House officer, Garidepalli P.S.,

Nalgonda District.

2 Two C.Cs to the Govt.Pleader for Home,

High Court buildings, Hyderabad (OUT)

3 The Under Secretary, Ministry of Law, Justice and Company

Affairs, Union of India, New Delhi.

4 The Secretary, A.P.Advocates' Association, Library,

High Court buildings, Hyderabad.

5 8 LR copies

6 Two C.D. copies.